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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/512,085	02/24/2000	Fredrica V. Coates	50014-042	5426
20277	7590	08/20/2004	EXAMINER	
MCDERMOTT WILL & EMERY LLP 600 13TH STREET, N.W. WASHINGTON, DC 20005-3096			REICHLE, KARIN M	
			ART UNIT	PAPER NUMBER
			3761	
DATE MAILED: 08/20/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	09/512,085		COATES, FREDRICA V.	
	Examiner		Art Unit	
	Karin M. Reichle		3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 5-21 is/are pending in the application.
- 4a) Of the above claim(s) 5-9 and 11-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,10 and 17-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 May 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 5-9 and 11-16 are still withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 6.

From Applicants remarks, it is presumed that added claims 20-21 were deemed by Applicant to read on the elected species.

Specification

Drawings

2. The drawings were received on 5-7-04. The drawing changes filed 5-7-04 are approved by the Examiner but the replacement Figures filed on the same day are not approved. See the attached PTO-948.

Description

3. The disclosure is objected to because of the following informalities: On page 8, the amendment to lines 8-9 filed 5-7-04, lines 1-4 should be rewritten as presented previous to the last amendment and on lines 8-10, "take shape...removed" should be rewritten as --take shape by folding the corners 21 at what would be edges 42A and then seaming, i.e. the corners 21 are not removed--.

Claim Language Interpretation

4. It is noted that claim 1 as now amended does not require the four sides be stitched only directly to the anchor layer, i.e. the inner layer could be stitched directly and indirectly to the anchor layer but not directly to the outer layer. Although on page 7, line 15 and page 9, line 1 Applicant discloses the stitching can be heat sealing, in light of Applicant's arguments bridging pages 18-19 of the '12-19-03 response, "stitched" as claimed is interpreted to require penetration through the layer(s) which could possibly cause leakage of fluid, i.e. sewing by thread. Claim 1 requires an anchor layer having a shape generally conform to that of the outer layer. This language is interpreted in light of claim 21 and Figures 1-1H of the instant application.

Claim Rejections - 35 USC § 102/103 or 103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 1-2, 10, 17-18 and 20-21 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Brownlee et al '422.

See Figures 1 and 4-6 which show an diaper 10 having a body 12 of a fabric which is of two plies 12' and 12'' reverse stitched and a third ply 16 stitched to the upper of the two plies which forms a waterproof channel or pocket along with two discrete panels 22 which are not spaced inwardly from the ends of the body 12. See also Figures 7-8 which shows a preferred waterproof channel or pocket in which the panels 132 are monolithically formed, i.e. extensions thereof, rather than discrete, and spaced inwardly

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of the ends of the body 12 rather than flush therewith. Col. 4, lines 52-55 set forth that Figures 7-8 illustrate a preferred manner of forming the water proof channel and attaching it to the fabric body 12 of the diaper, note again body 12 is described at col. 2, lines 25-36 as being two ply and having a third ply stitched to the inner ply. Figures 7-8 are described at col. 1, line 66-col. 2, line 3 as a partial view of the channel or pocket attached to the body of the diaper. Col. 4, lines 54-58, describe that the body is formed of a layer of the same fabric set forth in col. 2, lines 25-27 but do not disclose that such is the only layer, whether this layer is two plies, one ply or one ply of two plies, whether it has fasteners and leg elastics and how such are related thereto and give it a numeral 100 rather than 12'. Figure 8 shows the channel or pocket stitched to such layer. See also col. 4, line 59-col. 5, line 14. Therefore the Brownlee '422 patent clearly discloses an inner layer of fluid resistant material 108 which has all its sides, i.e. adjacent extensions or panels 117, 118 and 132, attached to a layer, at least directly by stitching 127 and 129 and 133, the sides being displaced inwardly, see Figure 7, from sides of the layer it is attached to and extending outwardly, i.e. upwardly, therefrom on the inner side of a diaper or garment, i.e. 117, 118 and 132, to form a pocket which prevents leakage of body fluids, i.e. a protective undergarment, see the Figures again. With regard to claims 2 and 17-18, see portions cited above, i.e. base of claim 2 is 109, stitching 133 interconnects sides as claimed in claims 17 and 18. With regard to claim 21, the sides, i.e. adjacent 117, 118 and 132, intersect, at the very least, at stitch lines 127 and 129 adjacent 12 as seen in Figure 7. It is noted that the specific number of stitch lines which intersect is not claimed. Claim 1 further requires the attached layer to be an anchor layer which is directly attached to an outer layer of fluid resistant material which layers are

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generally complementary in shape and size and the pocket, i.e. inner layer, but the pocket not being directly stitched to the outer layer. Claim 20 further requires the anchor layer secured to the outer layer only at a peripheral edge of the outer layer. While it is the Examiner's first position based on col. 4, lines 52-55 and col. 2, lines 25-41, and Figures 1 and 4-8 that the waterproof channel of Figures 7-8 may be attached to the inner ply of the body 12 similar to that of the channel or pocket 8 of Figures 1 and 4-6 but having monolithically formed panels rather than discrete panels spaced inwardly of the ends of the body 12, due to the language of col. 4, lines 54-58, the use of the numeral 100 rather than 12' or 12'', Figures 7-8 and the description thereof in col. 1, line 66- col. 2, line 3 it is the Examiner's second position that even if Brownlee does not explicitly set forth such, that to employ the waterproof channel of Figures 7-8 with the body 12 and manner of securement of Figures 1 and 4-6, i.e. the channel connected to the inner ply 12' of the body which ply 12' is connected to the outer ply 12'' at the periphery thereof as claimed would be obvious to one of ordinary skill in the art in view of the recognition that such combination would provide a more aesthetically pleasing, garment like appearance with better leak prevention, i.e. the body 12 as shown in Figures 1 and 4-6 has finished elasticized edges and does not show the stitching of the pocket attachment at the exterior but provides less seams, e.g. between the panels 22 and ply 16, for potential leakage by monolithically formation of the pocket.

In regard to claim 10, this claim still recites a product by process, i.e. defines the invention by how made, i.e. corners of a rectangular material removed instead of, e.g., material having a shape as shown in Figures 1E and 1F, i.e. cutting the original material not to include corners in the first place. As set forth in MPEP 2113 the patentability of

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such claims are based on the product itself not the method of production. If the end product in the product by process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. As best understood due to the breadth of the claimed process, i.e. does not set forth the size or orientation of the triangular portions or how the sides are joined, e.g. overlapping, abutting etc., the end product by the claimed process is the same as or obvious from the Brownlee device.

7. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brownlee '422 in view of Coates '526 and Ohara GB '573.

Applicant now claims an entire perimeter of the pocket circumscribed by an elastic strip. Since Applicant has not provided a specific definition for the term "circumscribed" such will be given its broadest customary, i.e. dictionary, definition in light of the specification. The American Heritage Dictionary defines "circumscribe" as "To draw a line around, encircle.", "To confine within bounds; restrict.", "To determine the limits of; define.". Furthermore the strip of elastic 42 as seen in Figures 1-1H wrap the exposed edge from the inner surface to the outer surface of the pocket material as well as extend along the edge of the pocket along its entire perimeter. Therefore, as claimed, the definition of "circumscribed" as interpreted in light of the specification is broad enough to include not only extending along the entire perimeter of the pocket defined by the edge alone but also such in combination with wrapping the edge. The Brownlee device does not include such an elastic strip. The Brownlee device folds over a raw edge of a portion of the perimeter of the pocket and places elastic therein to provide a comfortable elastic edge. However, Coates '526, e.g. element 64 and col. 7, lines 40-42,

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and Ohara '573, element 10 and page 2, lines 36-40, also teach a comfortable elastic edge, partial or entire, but provide such by wrapping or "circumscribing" the raw edge with an elastic strip. To provide elasticsation along the entire perimeter of the pocket, as taught by Ohara, rather than just a portion thereof on the Brownlee device would be obvious to one of ordinary skill in the art in view of the recognition that such would optimize the benefits of the elastic, i.e. provide the benefits to the entire edge, i.e. optimize the fit of the pocket to the wearer, i.e. improve leakage prevention, and the desire of Brownlee to provide better fit. Additionally, to make the folded over elastic containing edge of Brownlee an edge circumscribed by an elastic strip as taught by Coates and Ohara instead would be obvious, see *In re Siebentritt* (two equivalents are interchangeable for their desired function, express suggestion of desirability of substitution not needed to render such substitution obvious), i.e. in the instant case both configurations provide a finished elastic edge.

Response to Arguments

8. Applicant's remarks with regard to the formal matters in the 5-7-04 response have been noted but are either deemed moot in that such issue has not been reraised or deemed not persuasive for the reasons set forth supra. It is noted that the Applicant's interpretation of the Examiner's interpretation set forth on page 15, last paragraph was not commensurate with that set forth in the Office Action. Since the pertinent portion of claim 1 has been amended the interpretation previously set forth by Examiner is now moot. Applicant's remarks of 5-7-04 with regard to the prior art rejections, specifically Brownlee, have been noted but are deemed not persuasive. First, the arguments set forth

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on page 16, first full paragraph are unclear because first all the embodiments are discussed but then a distinction seems to be made between the embodiments. Also, it is unclear whether such arguments address both the 102 and 103 rejections, i.e. the Examiner is not sure what is being argued with respect to what. Therefore the remarks set forth on page 17, first full paragraph are also deemed not persuasive. The remarks with respect to claims 17, and 20-21 are deemed not persuasive for the reasons set forth with regard to claim 1 and/or because the prior art teaches the claimed feature. With regard to claim 10, Applicant's remarks are narrower than the claim language and the prior art rejection in that the claim still requires removal of corners and the claim was not ignored on any grounds let alone set forth as an improper product by process claims. The prior art rejection addresses that such is a product by process claims and how such are interpreted. Applicant's remarks with regard to the interpretation of claim 19 is narrower than the definition of such term set forth in the specification, i.e. the term has not been specifically limited by providing an explicit definition of the terms in the specification commensurate in scope with the arguments. Also Applicant's remarks with regard to the prior art combination are narrower than the rejection, i.e. a reason or motivation has been provided contrary to Applicant's remarks and no arguments have been set forth with regard to such reason.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

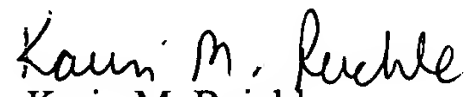
Any new grounds of rejection were necessitated by the language changes to claims 1, 10 and 21.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 308-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
August 16, 2004